IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 7976 of 2002(Y)

PETITIONERS:

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1. **S. RESHMA, D/O. LATE K. VISWANATHA PILLAI, THEKKADATHU VEEDU, PERUMKULAM P.O., KOTTARAKKARA, KOLLAM DISTRICT.**

2. **M. SARASWATHY AMMA, W/O. LATE K. VISWANATHAN PILLAI, THEKKADATHU VEEDU, PERUMKULAM P.O., KOTTARAKKARA, KOLLAM DIST.**

BY ADV. SRI.B.RADHAKRISHNA PILLAI
SMT.S.AMBIKA DEVI
SMT.BABY JOSE
SMT.DEEPTI M.PILLAI
SRI.R.JYOTHIKRISHNAN

RESPONDENTS:

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1. **STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE KERALA CERAMICS LTD., REPRESENTED BY ITS MANAGING DIRECTOR, KUNDARA, KOLLAM.**

3. **MANAGER, PERSONNEL AND ADMINISTRATION, THE KERALA CERAMICS LTD., KUNDARA, KOLLAM.**

4. **TAHASILDAR, KOTTARAKKARA TALUK OFFICE, KOTTARAKKARA.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN for R1
BY ADV. SRI.E.K.NANDAKUMAR for R2 & R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.14276/2002 IN O.P.NO.7976/2002 Y

DISMISSED

2/11/2007 **SD/-THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE EXTRACT CERTIFICATE OF MARRIAGE DTD. 25/10/1999 ISSUED BY THE SECRETARY, NEDUVATHOOR GRAMA PANCHAYATH.**

EXT.P2: **COPY OF ORDER NO.S2 7299/COM/99 DTD. 29/10/1999 ISSUED BY THE LABOUR WELFARE FUND COMMISSIONER.**

EXT.P2(A): **COPY OF STAMPED RECEIPT GIVEN BY THE 2ND PETITIONER ON RECEIPT OF THE SAID AMOUNT OF RS.2,500/-.**

EXT.P3: **COPY OF CERTIFICATE NO.K.DIS.10993/99/A4 DTD. 4/01/2000.**

EXT.P4: **COPY OF THE AFFIDAVIT SWORN BY THE 2ND PETITIONER AND ELDER DAUGHTER, REKHA BEFORE THE NOTARY PUBLIC KOTTARAKKARA.**

EXT.P5: **COPY OF THE AFFIDAVIT SWORN BY THE 2ND PETITIONER DTD. 19/04/2000 BEFORE K.K.CHANDRASEKHARAN, NOTARY PUBLIC, KOLLAM.**

EXT.P6; **COPY OF THE LETTER NO.MPA:1786:2000 DTD. 1/09/2000 ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER.**

EXT.P7: **COPY OF THE LETTER NO.REF/KCL/FIN/EPF/4207/99 DTD. 8/10/1999.**

EXT.P8: **COPY OF THE PENSION PAYMENT ORDER ISSUED BY THE ASSISTANT PROVIDENT FUND COMMISSIONER.**

EXT.P9: **COPY OF THE PRESCRIPTION GIVEN TO THE 2ND PETITIONER BY DR. ACHAN M.ALEX, DTD. 11/02/1999.**

EXT.P10: **COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY DRI.VARGHESE PHILIP MANNIL HOSPITAL, PULAMON, KOTTARAKKARA DTD. 19/10/01.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF THE S.S.L.C. BOOK OF THE PETITIONER.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.7976 of 2002-Y

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Dated this the 2nd day of November, 2007.

JUDGMENT

1. One K.Viswanatha Pillai died in harness on 13-9-1999 while serving the second respondent Company. The materials on record show that the retiral benefits, including provident fund dues were made available to his widow Saraswathy Amma and two daughters of whom, one is S.Reshma. However, when Reshma, the first petitioner herein applied for appointment on compassionate grounds, her request was rejected solely on the ground that the copy of the SSLC book produced by her showed the father's name as K.Damodaran Pillai. Because this was the short ground on which the claim was rejected, no other ground in defence is pleaded by the

second respondent apart from stating that as of now, the Company is facing financial difficulties and an appointment, if at all, could be made only as and when a vacancy arises.

2. The overwhelming materials on record categorically show that Reshma, the first petitioner is the daughter of Viswanatha Pillai and that this fact situation has been accepted and acted upon by the Company themselves even while deciding and recommending on the retiral and other benefits due to the family on the unfortunate demise of Viswanatha Pillai in harness. The certification by the Tahsildar also discloses the identity of Reshma as the daughter of Viswanatha Pillai. It is her uncontroverted case that Damodaran Pillai, who is shown as the father in the SSLC book, is the brother of Viswanatha Pillai, who had taken her to the school for the first time. This story is necessarily to be believed on the basis of the overwhelming materials on record which unequivocally

show that Viswanatha Pillai left behind the second petitioner Saraswathy Amma and two daughters, including the first petitioner Reshma as his heirs and dependants.

3. In the aforesaid circumstances, notwithstanding the erroneous entry in Ext.R2(a) SSLC book, the impugned decision of the second respondent refusing compassionate appointment to the first petitioner is set aside, declaring that on the basis of the materials on record, the first petitioner Reshma is to be treated as the daughter of Viswanatha Pillai, the demised employee. Following this declaration, the second respondent is directed to take up the request of the petitioners for appointment to the first petitioner on compassionate grounds referable to the demise of K. Viswanatha Pillai and take an appropriate decision in accordance with law, having regard to the totality of the facts and circumstances. In view of the submission on behalf of the second respondent that the

appointment could be made only as and when a vacancy arises, the second respondent will make an endeavour to find out whether it has made any compassionate appointment referable to any employee, who died in harness, after the demise of Viswanatha Pillai and if any such dependent has been appointed, the Company shall make an endeavour to give the first petitioner an appointment at the earliest. Let a final decision in this regard be taken within an outer limit of four months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.7976 of 2000-Y

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JUDGMENT

Dated: 2nd November, 2007.